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Opinion

KEY-GENERAL

October 9, 1958

NEW HAMPSHIRE LAW LIBRARY

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CONCORD, N.H.

Admiral C. A. Brinkmann
State Director of Civil Defense
64 South Street
Concord, New Hampshire

Dear Admiral Brinkmann:

You have requested our advice as to whether you may lawfully sign on behalf of the State of New Hampshire a proposed "Memorandum of Understanding" between the Federal Civil Defense Administration and the State of New Hampshire relative to the program for donation of Federal surplus personal property to State and local civil defense organizations as authorized by Public Law 152 81st Congress, as amended by Public Law 655 84th Congress.

In connection with your request you have submitted a copy of the proposed "Memorandum of Understanding" together with a copy of Federal Civil Defense Administration Advisory Bulletin #202 dated September 18, 1956. The latter document sets forth in great detail the manner in which the Federal program is to be conducted and includes extracts of the pertinent Federal legislation and Federal Civil Defense Agency regulations Part 1702, relating to the disposal of surplus property for civil defense purposes.

From a review of our statutes it would appear to us that the proper agency to sign the "Memorandum of Understanding" is the New Hampshire Distributing Agency rather than the State Director of Civil Defense.

From a review of RSA Chapter 8-A (supp) it seems clear that the Legislature has delegated to the New Hampshire Distributing Agency authority to make such agreements with the Federal Government as may be required by Federal laws and regulations with respect to surplus Federal property. We specifically refer you to RSA 8-A:6:

"8-A:6 Duties. Subject to the supervision of the comptroller the director [of the New Hampshire Distributing Agency] shall organize and supervise the office staff of the agency; shall request, transport, receive, warehouse, allocate, enforce compliance and deliver where deemed expedient any federal surpluses made available to the state by the federal government. The director is authorized subject to approval by the comptroller to execute all contracts, agreements, leases or other documents necessary for the operation of the agency in accordance with regulations and directives of the federal government."

C O P Y

Admiral C. A. Brinkmann

-2-

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We find no similar authority granted to the State Director of Civil Defense in RSA 107, the Civil Defense Act.

You have expressed concern as to Paragraph 5 of the proposed "Memorandum of Understanding" which requires that the State Civil Defense Director shall require that the donee civil defense organization shall comply with established State practices for State owned property governing A) warehousing and storage methods and procedures, B) record keeping and inventories, and C) the protection of property from fire, theft, vandalism and weather. We find no authority in either the Civil Defense Act or the New Hampshire Distributing Agency Act for the imposition upon the political subdivisions of the State of the same practice relative to publicly owned property that apply to State owned property. In our view your commitment to enforce compliance with such standards by local civil defense organizations would be meaningless as the statutes give you no means by which to enforce such compliance.

I have examined our State Manual of Procedure prepared by the Department of Administration and Control, which sets forth State standards as to inventory control, record keeping, etc., and we find that the State standards are very comprehensive indeed. It would seem impractical, if not impossible to attempt to foist these same standards on all local civil defense organizations many of which are located in tiny communities in this State.

Very truly yours,

George T. Ray, Jr.
Assistant Attorney General

GTR,Jr/m